Dee May
Vice President
Federal Regulatory

verizon

1300 I Street, NW, Suite 400 West
Washington, DC 20005

Phone 202 515-2529
Fax 202 336-7922
dolores.a.may@verizon.com

September 10, 2004

Ex Parte

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: **Section 251 Unbundling Obligations for Incumbent Local Exchange Carriers, CC Docket No. 01-338; Implementation of Local Competition Provision of the Telecommunications Act of 1996, CC Docket No. 96-98; Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147**

Dear Ms. Dortch:

The attached letter was provided to Chairman Powell today. Please place it on the record in the above proceedings.

Please let me know if you have any questions.

Sincerely,

Dee May

Attachment

cc: Scott Bergmann
Michelle Carey
Jeffrey Carlisle
Daniel Gonzalez
Christopher Libertelli
Thomas Navin
Jessica Rosenworcel
Austin Schlick
John Stanley
Bryan Tramont
Julie Veach

Thomas J. Tauke
Executive Vice President
Public Affairs and Communications

1095 Avenue of the Americas
Room 3911
New York, NY 10036
Phone 212 395-1032
Fax 212 840-4103

1300 I Street NW
Suite 400 West
Washington, DC 20005
Phone 202 515-2404
Fax 202 336-2914
thomas.j.tauke@verizon.com

September 10, 2004

Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Powell:

This letter follows up on a couple points relating to the scope of Verizon's petition for forbearance from any separate unbundling obligations imposed by section 271 on broadband facilities.

First, as we have emphasized previously, Verizon's petition does not attempt to obtain broader unbundling relief than the Commission adopted under section 251 in the *Triennial Review Order*. The relief Verizon seeks here is a determination that the broadband elements that the Commission already has determined need not be unbundled under section 251 also do not have to be unbundled under section 271. Granting this relief will make clear that the unbundling rules that apply to broadband facilities are the same in states where section 271does apply as the unbundling rules that apply to those facilities in states (or parts of states) where section 271 does not apply. To put it another way, the petition does not seek any broader relief under section 271 than the Commission has determined to be appropriate under section 251.

For example, Verizon's petition does not ask the Commission to expand the definition of broadband facilities that are free from unbundling to cover network architectures that were not addressed in the *Triennial Review Order*, such as fiber-to-the curb or fiber-to-the-node architectures. While a number of parties have separately asked the Commission to extend unbundling relief to additional architectures such as these, those issues will be decided separately and are not raised by Verizon's petition. Instead, Verizon's forbearance petition requests only that the Commission make clear that the broadband facilities it has determined do not have to be unbundled under section 251 also do not have to be unbundled under section 271.

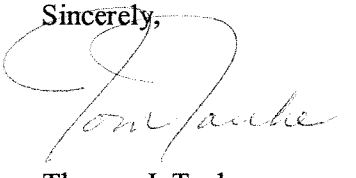
Second, Verizon's 271 forbearance petition does not ask the Commission to decide whether some form of mandatory open access requirement should be imposed or on what terms. On the contrary, Verizon's petition addresses only the separate unbundling requirements imposed under section 271. To be sure, Verizon strongly believes that the Commission should *not* impose mandatory access regulations on any broadband providers, and that all broadband providers instead should be allowed to negotiate voluntary access arrangements on commercially reasonable terms. Indeed, we have previously endorsed the four "Internet Freedoms" principles that you have laid out to guide any such voluntary arrangements, and we agree that providing consumers with choice makes good business sense. Those issues, however, already are being addressed by the Commission in a series of separate rulemaking proceedings, including the so-called *Non-Dominance* and *Title I* proceedings that deal with wire line telephone companies' broadband services and the Further Notice in the *Cable Modem Proceeding* that deals with cable companies' broadband services. We also have separately asked the Commission to clarify the rules that

apply to broadband services we provide over our new fiber-to-the premises networks in the interim until those rulemakings are completed. But in each case, the questions of whether any open access requirements should apply and, if so, on what terms, will be decided in those separate proceedings, and are not part of Verizon's 271 forbearance petition.

Because the question of whether to forbear from any separate unbundling obligations imposed by section 271 is separate from the open access issues the Commission is considering in its other ongoing proceedings, granting forbearance will not limit the Commission's ability to address that question in those other proceedings. If the Commission were to determine that some form of open access regulation were appropriate for broadband service providers, it presumably would adopt any such regulation under its authority under Title I or Title II of the Act depending on its resolution of the threshold issue of how broadband should be classified for regulatory purposes. In contrast, the only issue here is whether to forbear, with respect to broadband facilities only, from the separate *unbundling* requirements that the Commission has interpreted section 271 to impose. The provisions at issue, checklist items 4, 5, and 6, deal only with the question of whether particular components of the network must be provided "unbundled" from one another and from other services. Regardless of how those requirements might ultimately be interpreted to apply in the context of new broadband network facilities, those particular checklist provisions are unlike other provisions of the Act in that they do not deal at all with the broader question of access to or interconnection with the network generally (and do not use those terms).

Moreover, even apart from this fact, it would make no sense for the Commission to use section 271 as a vehicle for imposing a general open access requirement. Among other reasons, the checklist provisions at issue apply only to the Bell Operating Companies. They do not apply to other local operating telephone companies, nor do they apply to other broadband service providers such as cable companies. In Verizon's case alone, this would mean that any requirements imposed based on those provisions would apply in some states, such as Massachusetts and New York, where section 271 applies, but not in other states such as California, Florida, and Texas, where section 271 does not apply. Indeed, in states like Virginia and Pennsylvania, where there is more than one Verizon local operating company, including one in each state that is not a Bell Operating Company, any such requirement would apply in some parts of the state, but not others. In short, the use of section 271 as a vehicle for imposing access requirements would make no sense, not only because it would result in a patchwork of differing broadband regulations within Verizon itself, but it would result in an even greater patchwork between companies and service areas nationally because it would not apply to any companies that are not former Bell Operating Companies and would not apply to other broadband providers such as cable, regardless of how their services are classified for regulatory purposes.

Sincerely,



Thomas J. Tauke

cc: Commissioner Kathleen Q. Abernathy
Commissioner Michael J. Copps
Commissioner Kevin J. Martin
Commissioner Jonathan S. Adelstein